

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4055 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No.
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RABARI SAJAN ARJAN

Versus

DISTRICT MAGISTRATE

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Appearance:

MR SATISH R PATEL for Petitioner  
MR.NEEGAM SHUKLA,AGP, FOR Respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/11/96

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 27.4.1996 passed by the District Magistrate, Junagadh whereby the petitioner has been detained under the provisions of Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed on 28.4.1996 and since then the petitioner is under detention lodged at Bhuj Jail.

The present Special Civil Application was filed in this Court on 14.6.1996 and on 17.6.1996 Rule returnable for 9.7.1996 was issued. So far no reply has been filed nor any affidavit in rejoinder has been filed. The grounds annexed with the detention order show that 7 criminal cases under the Prohibition Act Chapter 16 and 17 were registered against the petitioner which were pending for trial at the time when the detention order was passed. Besides this the Detaining Authority has also taken into consideration the statements made by five witnesses against the petitioner's antisocial and criminal activities. The petitioner is taken to be a bootlegger and dangerous person and the detention order has been passed to prevent the petitioner from continuing his antisocial activities while claiming privilege under section 9(2) of the PASA Act to keep the identity of the witnesses secret for the reasons of their security.

It has been submitted by the learned counsel for the petitioner that the allegations and material relied upon against the petitioner do not make out the case of breach of public order and at the most it can be said to be a case of law and order only. Besides this it has been submitted that the petitioner's right of making effective representation under Article 22(5) has been violated because the copies of the orders were not supplied to the petitioner. Mr.Shukla, learned AGP appearing for the respondents has orally stated that the copies of the bail orders and bail applications were not supplied to the petitioner with regard to CR.No. 281 of 1995 and CR No. 391 of 1995.

I have heard the learned counsel for both the sides. The case of the petitioner is fully covered by the decision of this court rendered on 4.10.1996 in Special Civil Application No. 3879 of 1996 and the decision of the Supreme Court in Mustakmiya's case reported in 1995(2) GLR Pg.1268, it is clearly made out that the detention order has been passed on the ground of breach of law and order and it cannot be said to be a case of breach of public order. Besides this the petitioner's right under Article 22(5) of the Constitution of India is also made out because it is uncontroverted rather admitted position that copies of bail applications and bail orders in CR No. 281 of 1995 and 391 of 1995 had not been supplied to the petitioner. The impugned detention order deserves to be quashed and set aside.

Accordingly, this Special Civil Application is allowed. The impugned detention order dated 27.4.1996

passed by the District Magistrate, Junagadh is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. Rule is made absolute.

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